



Setti D. Warren
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development


Telephone
(617)-796-1120

Telefax
(617) 796-1142

TDD/TTY
(617) 796-1089

DATE: December 7, 2010

TO: Alderman Marcia T. Johnson, Chairman
and Members of the Zoning and Planning Committee

FROM: Candace Havens, Interim Director of Planning and Development 
Jennifer Molinsky, Interim Chief Planner – Long Range Planning
Brian Lever, Senior Preservation Planner

SUBJECT: **Petition # 235-10** Ald. Baker and Yates on behalf of the Newton Historical Commission requesting updates to **Section 22-50** Demolition of historically significant buildings or structures., to minimize inconveniences to homeowners proposing modest changes and to enhance protections for historic structures proposed for demolition, with specific amendments designed to (1) reduce the number of applications filed and allow smaller projects to occur without review; (2) establish a minimum period of delay for full demolition if the structure is found to be preferably preserved; and (3) extend the existing period of delay, as has occurred in other communities, for structures proposed for full demolition if the structure is found to be preferably preserved.

CC: Mayor Setti D. Warren
Board of Alderman
John Lojek, Commissioner, Inspectional Services Department
Marie Lawlor, Assistant City Solicitor
Donald Lang, Chair, Newton Historical Commission

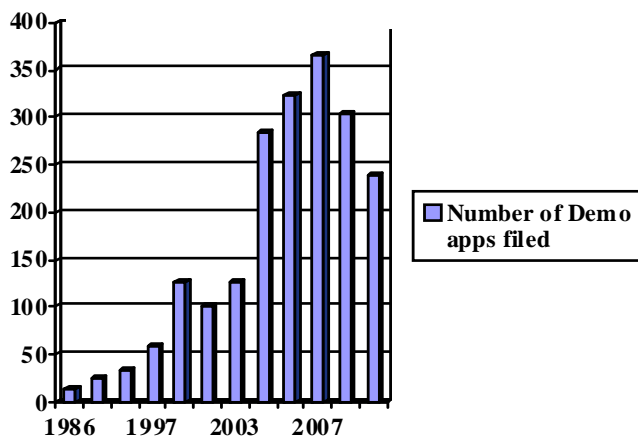
The purpose of this memorandum is to provide the Zoning and Planning Committee with information on petition #235-10 regarding amendments to the Demolition Delay Ordinance. A change to the Demolition Delay Ordinance requires a vote by the Board of Aldermen.

BACKGROUND

In 1985, the Demolition Delay Ordinance was enacted enabling the Newton Historical Commission (NHC) to delay the demolition of historically significant buildings and structures, the loss of which was considered to be detrimental to the historic resources and heritage of the City. Initially the delay was six months, later extended to one year. In order for the one-year delay to be imposed, a building or structure has to be found both historically significant (requiring review of the Historical Commission) and preferably preserved (meaning its loss will be detrimental). During the one-year delay, property owners may apply to waive the remainder of the delay based upon mitigating circumstances.

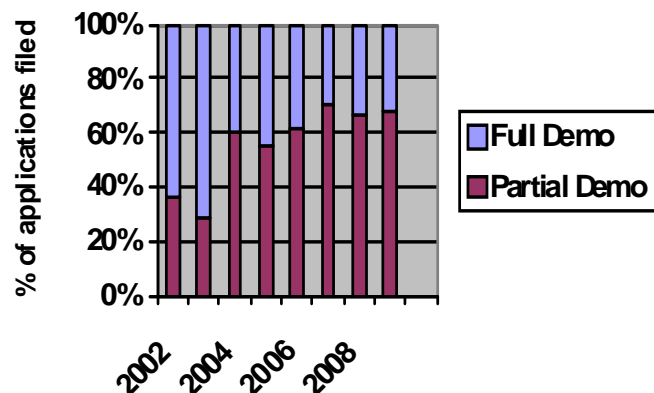
In 2003, the Commission adopted an internal review policy regarding partial demolition, defining it as demolishing or altering greater than 25% of a façade or roof. This policy change was formally adopted as part of the ordinance change in 2008, which also granted a staff level review. The Planning Department and the Historical Commission have since engaged in a review of the effectiveness of the Demolition Delay and have noted the following issues: (1) The number of filings for demolition review is higher in Newton than any other community in Massachusetts; in fact, Newton annually receives two to three times as many applications as the City of Boston due to the strict filing procedures narrowly defining demolition; (2) the Historical Commission has been inundated with requests for waivers of the Demolition Delay even before a building is put on the one-year delay and in other cases applicants apply for a waiver immediately upon the delay determination and keep returning until a waiver is obtained; (3) the effectiveness in preserving historic buildings and structures in Newton is diminished due to the issuance of waivers for replacement buildings; (4) in comparison to other communities such as Cambridge, Newton's delay saves far fewer buildings from destruction; (5) preservation staff in Newton spend far more time on demolition review than any other job responsibility (and more than other staff in other communities), which takes time away from other important job functions such as grant writing, historical research, and public outreach.

Number of Demolition
Review Applications Filed



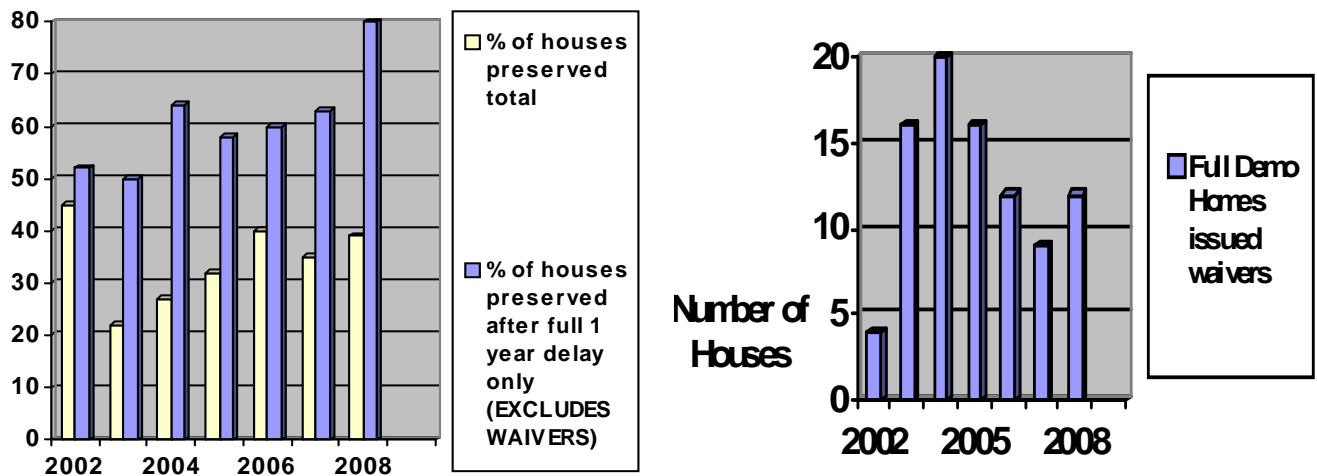
***25% threshold
policy adopted in
2003**

Full Versus Partial
Demolition Breakdown



The 2003, change resulted in the filing of many more applications for partial demolition, defined as altering or demolishing greater than 25% of a roof or façade. Other communities define partial demolition as removing 25% of a building - not 25% of a roof or façade. Currently roughly $\frac{3}{4}$ of applications are for partial demolition where they once occupied less than $\frac{1}{2}$ of applications filed. In many cases where the houses are small 25% of a façade can be altered by simply adding or removing a mudroom, sliding glass door, or some other alteration that is small in scope. From 2003 to 2008 Historical Commission meetings often considered 20 to 30 agenda items and meetings lasted late into the night. The 2008 staff approval resulted in a screening process whereby staff

could sign off on smaller changes that occurred to historic buildings. There are still hundreds of applications filed, but the burden of review has been shifted to staff rather than the Historical Commission. Demolition review occupies the most time of all staff responsibilities. Since the 2003 change, the efforts to save historic buildings have suffered. In order to move through the dozens of applications before them in an evening, the Historical Commission issued numerous waivers of the Demolition Delay, spending only a few moments per application instead of focusing only on substantial projects that affected significant buildings. Meanwhile, applicants sometimes waited hours for the brief review of their item, which was frustrating for many. Due to the increase in waivers, historic buildings were demolished at a faster rate than ever before.



Before the 2003 change, between 40% and 50% of applications for full demolition resulted in buildings being saved. Of the buildings found preferably preserved in 2003, only 22% were saved. In contrast the, number of buildings that were saved as a result of undergoing the entire one-year delay has been in excess of 50% each year. Our conclusion is that ***a building is far more likely to be preserved if it undergoes the full delay.*** The more waivers issued, the fewer buildings preserved. Newton preservation staff has spoken with their counterparts in Cambridge and Brookline and learned that waivers of the Demolition Delay are not issued as quickly or as easily as they are in Newton; staff in Cambridge estimate that over 50% of demolition applications annually filed result in the building being saved, a significant advantage over Newton.

PROPOSAL

To address these issues, the Historical Commission has proposed the following changes to the Demolition Delay Ordinance:

- 1) Loosen the filing threshold by increasing the definition of partial demolition from 25% to 50% of a façade or roof, thereby reducing the number of applications filed.
- 2) Insitute a minimum period for full demolition applications found preferably preserved of four months. This period is intended to promote the reuse of buildings. After four months an applicant can then apply for a waiver of the delay for a replacement building. Partial demolition applications will not be affected and can be issued waivers at the first meeting.

- 3) Increase the total length of the Demolition Delay to 18 months. As discussed, the longer an applicant undergoes the delay, the more likely the building is to be preserved. Currently, five communities in Massachusetts - Acton, Amesbury, Brookline, Chatham, and Middleborough - have 18-month delays. In the case of Brookline and Acton the extra six months beyond the year delay is only for National Register-listed or other specially designated historic properties. The experience of Chatham and Amesbury is illustrative of the impact of increasing the demolition delay to 18 months:

Chatham: Chatham's Commission has had an 18-month delay for over three years; previously, the delay was 12 months. The Chairman of the Commission reports that there has been no negative reaction to the change and that the Commission still issues waivers of the delay on an as needed basis. The Chairman stated that 12 months was insufficient to dissuade people from demolishing buildings, but since the change, the Chatham Historical Commission has been much more successful in preserving buildings and that often people do not even apply to demolish buildings upon hearing about the delay and choose to renovate instead.

Amesbury: Amesbury's Historical Commission found that a demolition delay of one year or less was not sufficient for applicants to fully investigate and implement alternative solutions to demolition. A member of the Commission notes that in a couple of situations, reasonable alternatives to demolition were found but the delay expired before they could be implemented and the owners found it more cost effective to demolish the structures than wait a few more months until they could be moved.

PLANNING DEPARTMENT ANALYSIS

The Planning Department has reviewed this matter with the Historical Commission and recommends adoption of the proposed changes. The Planning Department believes the changes will allow City staff to focus on substantial projects most in need of review, and through increasing the length of the Demolition Delay, provide a greater incentive for the preservation of Newton's historic properties.

ATTACHMENTS

Attachment A – Memo from Newton Historical Commission

Attachment B – Demolition Delay Ordinance marked up with proposed changes. Text that is struck through is text proposed to be deleted and bold text is text proposed to be inserted.

MEMO FROM NEWTON HISTORICAL COMMISSION

The Newton Historical Commission voted unanimously at its January 28, 2010 hearing to propose the changes set forth in the attached copy of the Demolition Delay Ordinance. We are confident that these changes will have the dual benefit of reducing the number of historically significant buildings and structures demolished annually, while simultaneously making it less complicated for city residents doing remodeling projects.

The intent and purpose of the Demolition Delay Ordinance is “*the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.*” The ordinance was adopted because historical preservation was determined to be an important and integral component of the *Newton Comprehensive Plan*.

Following that directive, the Commission's single most important task is to prevent the total demolition of historically significant buildings and structures to the greatest extent possible. Projects that involve an addition or a renovation are infinitely preferable simply because much of the original building or structure will remain intact. The proposed changes are consistent with the operational concept in play during the last review of the Demolition Delay Ordinance that the openings in the net be enlarged to permit the smaller fish to escape while simultaneously catching the larger fish.

The proposed changes are intended to ease the burden on City residents doing remodeling projects and will reduce the number of projects subject to the review of the Historical Commission and its staff. This will be accomplished simply by increasing the percentage of any single exterior wall surface, which includes exterior wall surfaces that would be enveloped by subsequent additions that requires review. The proposed changes are intended to reduce the number of total demolitions and expediting review of remodeling projects as follows:

- Extend the period of the demolition delay for a total demolition from one (1) year to eighteen (18) months. The demolition delay for a remodeling project would remain unchanged at one (1) year.
- Further, projects involving total demolition that are determined to be preferably preserved would be prohibited from presenting their proposal for a replacement building or structure for four (4) months.
- Increase the filing threshold allowing more small remodeling projects to occur without review.

Please refer to the attachment for specifics.

PROPOSED CHANGES TO THE DEMO DELAY ORDINANCE

DIVISION 2. DEMOLITION DELAY

Sec. 22-50. Demolition of historically significant buildings or structures.

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

Commission: The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

Commission staff: The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

Commissioner: The commissioner of inspectional services.

Application: An application to the commissioner for a demolition permit as defined by this ordinance.

Demolition permit: Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

Total demolition: The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

Partial demolition: The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

- (1) *Items requiring review by the commission at a hearing.* Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.

- a) Additions or ~~rear~~-ells determined to be architecturally significant by commission or commission staff.

~~b) Attached garages determined to be architecturally significant by commission or commission staff.~~

c) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.

d) Porches determined to be architecturally significant by commission or commission staff, except open decks, ~~and~~ staircases, **and entryways.** ~~which are not original to the structure and therefore which are excluded from review.~~

e) Removal or **envelopment by subsequent additions** ~~covering~~ of ~~25~~**50**% or more of any single exterior wall surface, ~~which includes exterior wall surfaces that would be enveloped by subsequent additions.~~ Each wall is calculated by square footage individually.

f) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff. ~~including but not limited to the following items.~~

~~i) Brackets~~

~~ii) Crown molding~~

~~iii) Porch columns and railings~~

~~iv) Bay windows~~

~~v) Dormers~~

~~vi) Chimneys~~

(2) *Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate*

a) Removal or alteration of the roof structure ~~a) Construction of new dormers which encompass less than 50% of the roof surface.~~

~~b) Construction on existing flat roofs, which will not alter a significant architectural feature.~~

eb) Repair or replacement of existing and original **historic** porches with similar materials to match existing.

~~d) Removal of less than 50% of the roof structure.~~

ec) Demolition or construction of additions or alterations not visible from a public way.

~~fa)~~ Removal or **envelopment by subsequent additions** ~~covering~~ of ~~25~~**50**% to ~~50~~**100**% of any single exterior wall surface, ~~which includes exterior wall surfaces that would be enveloped by subsequent additions~~. Each wall is calculated by square footage individually.

(3) *Items considered to be de minimis and requiring no commission or commission staff review:*

a) Open porches **and entryways** consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the building.

~~b)~~ ~~Demolition or~~ **Construction** of new additions which **remove, alter, or envelop** ~~impact~~ **50**~~25~~% or less of a single exterior wall;

~~b)c)~~ **Removal or alteration of less than 50% of the roof structure**

~~ed)~~ Normal maintenance of a building's exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).

Historically significant building or structure: Any building or structure which is in whole or in part fifty or more years old and which

- (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or
- (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
- (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
 - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
 - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

- c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

Preferably preserved: An historically significant building or structure which the commission has determined

should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) *Procedure.*

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.

- (2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a

determination as to whether the building or structure is historically significant and shall provide the commission with the following information:

- a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;
- b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;

- c) a description of the proposed plans for demolition and the reason(s) therefore.

- (3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is

not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:
- a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or
 - b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.
- (5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:
- a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and
 - b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose

loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

- (6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.

- a) No demolition permit shall be issued **for a Total Demolition of a building or structure** until **eighteen (18) months** ~~one (1) year~~ after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such ~~one (1) year~~ **eighteen (18) month** period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

i~~a~~) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,

ii~~b~~) ~~has~~ agreed to accept a demolition permit on specified conditions approved by the commission.

iii) **If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.**

iii~~iv~~) **Notwithstanding the following. The commission shall not review the applicant's proposal for a replacement building or structure until four months subsequent to the determination that the building or structure which is the subject of an application for a demolition permit for Total Demolition is preferably preserved.**

- b) **No demolition permit shall be issued for a Partial Demolition of a building or structure until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition**

permit and the owner of the building or structure, if different from the applicant, has:

- i) agreed to accept a demolition permit on specified conditions approved by the commission.**
- ii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.**

- (7) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.
- (8) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.
- (9) If the applicant is someone other than the owner or his designated agent a demolition review application cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the

commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

- (e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such non compliance, and the commission has accepted the applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property."

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstitution of the fine for non-compliance with this ordinance.

- (f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.
- (g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.
- (h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.
- (i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.
- (j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.
- (k) *Applicability.*
- (1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

- (2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances. (Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V- 98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08)